

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
COMMERCE
HEALTH, EDUCATION,
LABOR, AND PENSIONS

July 19, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator Regan:

I am writing to thank you and your team at the Environmental Protection Agency (EPA) for your work on implementing the clean water programs included in the Infrastructure Investment and Jobs Act (IIJA)—especially the funding Congress made available to address PFAS contamination. This IIJA funding will be a vital piece of your efforts in implementing the EPA's PFAS Strategic Roadmap.

A key objective of both the IIJA and the EPA roadmap is to ensure that communities impacted by PFAS contamination receive the resources they need to access clean water. In line with this objective, I request that the agency work directly with Wisconsin municipalities, water utilities, and communities to ensure they are receiving the technical assistance necessary to execute infrastructure upgrades on PFAS-contaminated water systems.

Adams, Campbell, Eau Claire, La Crosse, Madison, Marshfield, Peshtigo, Rothschild, and Wausau are among the growing list of communities in Wisconsin that have shut down municipal wells or are providing residents with bottled water due to PFAS contamination. While these communities are making their own investments to replace parts of the local water infrastructure, additional support from the EPA is necessary to finish executing these large-scale projects.

Towns across Wisconsin are seeking to apply for and implement IIJA grant funding, however, many of the potential applicants are local governments or municipal utilities that have never received direct federal assistance from the EPA. To ensure the infrastructure funding reaches these communities with unmet needs, I urge the agency to provide robust technical assistance and face-to-face agency engagement while administering the IIJA water infrastructure programs.

I look forward to working with you to ensure Wisconsin's clean water needs are met through the IIJA funding, and I thank you for your consideration of this request.

Sincerely,



Tammy Baldwin
United States Senator

CC: Mitch Landrieu, Senior Advisor to the President of the United States

Congress of the United States
Washington, DC 20515

July 28, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan,

We write to urge the Environmental Protection Agency (EPA) to update and strengthen the final rule it plans to issue amending existing regulations governing the use of chemical dispersants in response to oil spills. New scientific research has demonstrated an urgent need for stronger regulations that better reflect the latest understanding of the risks that certain dispersants can pose to the environment and public health. Timely issuance of a robust final rule on chemical dispersants will significantly improve the health and safety of oil spill response workers and Americans in coastal communities at risk from oil spills.

EPA first proposed revisions to the chemical dispersant regulations — Subpart J of the National Contingency Plan (NCP), promulgated under the Clean Water Act (CWA) — more than seven years ago.¹ Subpart J sets forth the “[p]rocedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances” and a schedule for identifying and evaluating “dispersants, other chemicals, and other spill mitigating devices and substances” that may be used in response to oil discharges.²

EPA has never finalized this important proposed rule. In litigation over EPA’s failure to issue a final rule — *Earth Island Institute v. Regan* — Judge William H. Orrick of the Northern District of California granted summary judgment to the plaintiffs and ruled in 2021 that “EPA breached its nondiscretionary duty to issue the final rule . . . [and] delayed unreasonably in the process.”³ The court further found that EPA “failed to fulfill its nondiscretionary duty to revise or amend the NCP” in light of “new information relevant to dispersant efficacy, toxicity, and terms of authorization.”⁴ This was a necessary step, the court found, because “current standards for hazardous substances were insufficient to accomplish Congress’ goal” that EPA “provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance

¹ 33 U.S.C. § 1321(d)(2)(g); National Oil and Hazardous Substances Pollution Contingency Plan, 80 Fed. Reg. 3380 (proposed Jan. 22, 2015) (to be codified at 40 C.F.R. pts. 110 and 300).

² 33 U.S.C. § 1321(d)(2)(F), (G).

³ 553 F.Supp.3d 737, 740 (N.D. Cal. 2021).

⁴ *Id.* at 746.

discharges, including containment, dispersal, and removal of oil and hazardous substances.”⁵ The court ordered EPA to submit the final rule for publication in the Federal Register by May 31, 2023.⁶

Recent studies have found that oil-dispersant mixtures are very harmful to human health and wildlife.⁷ For example, the use of oil dispersants in the 2010 BP Deepwater Horizon disaster has been linked to molecular and cellular effects, organ dysfunction, and the debilitating illness of clean-up workers and area residents⁸ — harms for which BP compensated the victims in settling litigation over the spill.⁹ The forthcoming final rule must reflect the danger that oil dispersants pose, and must protect workers and their families from serious health effects. Our responses to hazardous oil spills should never sacrifice the health and well-being of those undertaking the difficult task of mitigating the environmental damage oil spills cause.

In the *Earth Island Institute* order, the court addressed EPA’s argument that it had previously amended the NCP: “[T]he amendments do not address chemical dispersants and oil spill response and are therefore unresponsive to the ‘new information’ that triggers the EPA’s duty to update the NCP.” In finalizing the chemical dispersant rule, EPA should heed the court’s words. If “new information” in the form of recent scientific research can make the standard for the use of oil dispersant chemicals safer and more effective, EPA should not ignore it. It is important for EPA to supplement the rule with the latest science. Without it, EPA cannot fully satisfy its duty under the CWA to identify whether dispersants can be used safely *at all* in the deep sea or in large quantities over long durations at its surface.¹⁰

To help us better understand EPA’s progress in issuing a long-overdue final rule on chemical dispersants that adequately protects human and ecological health, we request responses in writing to the following questions by August 30, 2022:

1. Will EPA supplement its final rule, due by May 31, 2023, with current science? Is EPA planning to reopen public comments as part of any process to supplement its 2015 proposed

⁵ *Id.* at 740, 743 (quoting 33 U.S.C. § 1321(d)(2)).

⁶ *Id.* at 752.

⁷ E.g., Hristina Denic-Roberts et al., *Acute and longer-term cardiovascular conditions in the [BP DWH] oil spill Coast Guard Cohort*, *Env’tl. Int’l*, Vol. 158 (Jan. 2022), <https://doi.org/10.1016/j.envint.2021.106937>; Stephanie Venn-Watson et al., *Adrenal gland and lung lesions in Gulf of Mexico Common Bottlenose Dolphins (*Tursiops truncatus*) Found Dead following the [BP] Deepwater Horizon Oil Spill*, *PLoS ONE* (May 20, 2015), <https://doi.org/10.1371/journal.pone.0126538>.

⁸ Mark A. D’Andrea, *The Development of Long-Term Adverse Health Effects in Oil Spill Cleanup Workers of the [BP] Deepwater Horizon Offshore Drilling Rig*, *Frontiers in Public Health* (Apr. 26, 2018), <http://doi.org/10.3389/fpubh.2018.00117>; Danielle Major et al., *Effects of Corexit oil dispersants and the WAF of dispersed oil on DNA damage and repair in cultured human bronchial airway cells*, *Science Direct, Gene Reports* (June 2016), <https://doi.org/10.1016/j.genrep.2015.12.002>.

⁹ *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179, 2:10-md-02179-CJB-SS, Exhibits to Deepwater Horizon Medical Benefits Class Action Settlement Agreement, Ex. 8 (Specified Physical Conditions Matrix) (E.D. La. May 3, 2012), <https://www.laed.uscourts.gov/sites/default/files/OilSpill/6.pdf>.

¹⁰ 33 U.S.C. § 1321(d)(2)(g)(iii).

rule with current science? If not, please explain if and how EPA is planning to accommodate the current science in its final rule.

2. If EPA is not supplementing its final rule with current science, please provide an explanation of how the existing version of the proposed rule addresses the implications of current science for deep sea dispersant use; dispersant use in large quantities over long durations at the sea surface; and dispersant use in state waters.

3. As part of this rulemaking proceeding, has EPA already used, or made plans to use, information from individuals (including testimony in legal proceedings) who wish to make EPA aware of medical conditions they attribute to an oil spill or dispersant exposure? If yes, how? If no, why not?

4. In addition to a final rule, what action is EPA considering, if any, to address the known long-term human and ecological health harms of oil spills and subsequent cleanup?

5. Please describe EPA's ability to secure a reliable source of reference oils needed to test dispersant toxicity and efficacy.

6. Does EPA have, or plan to have, a written description of the current science on the long-term human and ecological health impacts of chemical dispersants, on which EPA relies in making policy decisions on dispersant use or harms to human and ecological health? If so, please provide a copy.

7. In response to the 2021 oil spill off the coast of Orange County, California:

- a. Which dispersants were used in response to this spill and where and in what quantity were they used?
- b. What agency process was used to determine the response measures chosen, and what public participation opportunities did it afford?
- c. Were community members and first responders notified before dispersants were used?
- d. What research has been, or is being, conducted to assess the environmental and public health impacts of the dispersant used for this spill?

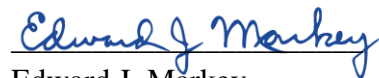
8. Individuals in communities potentially affected by dispersant use have asked to receive advance warning of dispersant use. Will EPA commit to using its authority to notify the public in advance of future dispersant use, and provide citizens an enforceable right to this information?

9. Given the long-term human and ecological harms wrought by oil spills and dispersant use, how does EPA intend to better involve local governments, citizens, and Tribes—as opposed to only state and federal regulatory agencies—in decision-making regarding oil spill preparation and response planning?

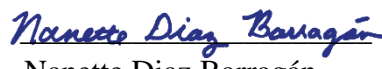
10. How do EPA's plans for stakeholder involvement in oil spill preparation and response planning compare to those established by the Oil Pollution Act, *i.e.*, Area Committees, Regional Citizens' Advisory Committees, and involvement of Local Emergency Planning Committees and Tribal Emergency Planning Committees?

Thank you for your careful attention to this matter. We look forward to learning about your progress and urge you to ensure that recent strong science is reflected in the final rule.

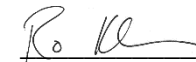
Sincerely,



Edward J. Markey
United States Senator



Nanette Diaz Barragán
Member of Congress



Ro Khanna
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

September 20, 2022

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

The Honorable Edward J. Markey
United States Senate
Washington, D.C. 20510

Dear Senator Markey:

Thank you for your letter of July 28, 2022, to U.S. Environmental Protection Agency Administrator Michael S. Regan, regarding the regulations governing the use of dispersants and other agents in response to oil spills under Subpart J of the National Contingency Plan (NCP).

In 2015, the agency proposed amendments to Subpart J of the NCP to ensure that chemical and biological agents meet rigorous efficacy and toxicity requirements, that product manufacturers provide important use and safety information, and that the response community is equipped with the proper information to authorize and use products in a safe, judicious, and effective manner. In 2021, the EPA finalized several provisions in the 2015 proposal, establishing new monitoring requirements for dispersant use in response to major oil discharges and to certain atypical dispersant use situations. The agency is currently working to issue a final action for the remaining proposed provisions by the court-ordered deadline of May 31, 2023.

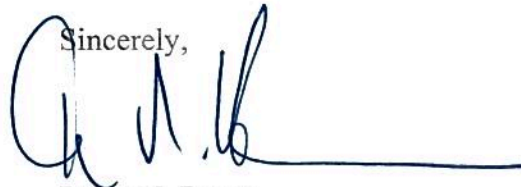
In your letter, you emphasized the importance of considering current science in relation to dispersant use. The EPA continues its commitment to using sound science to guide its policies and regulatory actions. Additionally, the agency continues to coordinate with our National Response Team (NRT) interagency partners to address broader oil spill preparedness and response issues, including how to best minimize the potential for long-term environmental and health impacts resulting from an oil spill and the associated response activities.

Your letter also highlighted the need to involve potentially affected communities in oil spill preparedness and response planning. The NCP regulations provide for participation from local agencies and officials in oil spill planning and preparedness activities. Further, the general public is able to participate through regular meetings of the Area Committees and the Regional Response Teams; announcements for these can be found in the [NRT Regional Response Teams](#) website by accessing the page for the region of interest. These opportunities allow the public to highlight issues for consideration and bring community perspectives into planning and preparedness efforts.

Regarding the information you requested specific to the 2021 oil spill off the coast of Orange County, California, please note that the U.S. Coast Guard served as the Federal On-Scene Coordinator and as the

Unified Command lead for that event. We defer to USCG as the best source for any relevant information regarding that response.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder in the EPA's Office of Congressional and Intergovernmental Relations at snyder.raquel@epa.gov or at (202) 564-9586.

Sincerely,


Barry N. Breen
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

September 20, 2022

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

The Honorable Nanette Diaz Barragán
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Barragán:

Thank you for your letter of July 28, 2022, to U.S. Environmental Protection Agency Administrator Michael S. Regan, regarding the regulations governing the use of dispersants and other agents in response to oil spills under Subpart J of the National Contingency Plan (NCP).

In 2015, the agency proposed amendments to Subpart J of the NCP to ensure that chemical and biological agents meet rigorous efficacy and toxicity requirements, that product manufacturers provide important use and safety information, and that the response community is equipped with the proper information to authorize and use products in a safe, judicious, and effective manner. In 2021, the EPA finalized several provisions in the 2015 proposal, establishing new monitoring requirements for dispersant use in response to major oil discharges and to certain atypical dispersant use situations. The agency is currently working to issue a final action for the remaining proposed provisions by the court-ordered deadline of May 31, 2023.

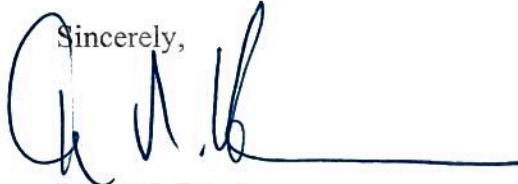
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Barry N. Breen
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

September 20, 2022

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

The Honorable Ro Khanna
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Khanna:

Thank you for your letter of July 28, 2022, to U.S. Environmental Protection Agency Administrator Michael S. Regan, regarding the regulations governing the use of dispersants and other agents in response to oil spills under Subpart J of the National Contingency Plan (NCP).

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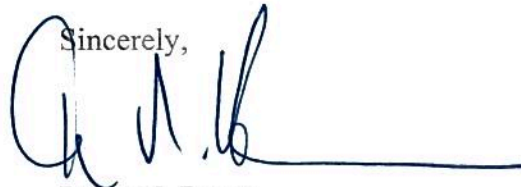
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Sincerely,


Barry N. Breen
Acting Assistant Administrator